

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**in the matter of
RULES & REGULATIONS IMPLEMENTING THE
TELEPHONE CONSUMER PROTECTION ACT OF 1991
Docket No. 02-278**

PETITION FOR EMERGENCY STAY & CLARIFICATION

The Air Conditioning Contractors of America (ACCA), a 501(c)(6) non-profit trade association, respectfully requests a stay of the rules adopted by the Commission on June 26, 2003 and published in the *Federal Register* on July 25, 2003, governing "unsolicited facsimile advertisements" as they apply to tax-exempt non-profit organizations.

In summary, ACCA requests this stay on the following grounds:

- ACCA depends on fax broadcast to communicate with more than 4,000 member companies and to keep them informed and involved in the legislative and regulatory process.
- ACCA cannot fulfill its mission of serving and representing these members without also promoting the sale of products and services in these broadcasts as we would be unable to meet our financial obligations.
- The heavy paperwork burden caused by a need to enroll these members in an opt-in fax program in such a short timeframe will overwhelm our small headquarters staff. The requirement cannot be met without causing delays in our communications program, thus hindering our public interest mission to involve members in the legislative and regulatory process.
- The nature of our members' businesses in August and September is such that it is likely there would be a lengthy delay between a request for permission and receipt of the signed form, thus hindering our public interest mission and impacting our financial ability to meet our obligations.
- ACCA supports the request for clarification submitted by the American Society of Association Executives (ASAE) on July 25, 2003.

Background: ACCA & Our Members

ACCA is a 501(c)(6) tax-exempt trade association whose mission is to serve and represent the nation's heating, ventilation, air conditioning, and refrigeration (HVACR) contracting businesses. Our members are almost all very small businesses, with 75% employing fewer than 10 people. ACCA's role is to provide these members with representation before legislative and regulatory bodies, while also informing and involving them in the legislative process. In addition,

ACCA develops and sells the procedures used by HVACR contractors in designing and installing energy efficient heating and cooling systems, and assists members in overcoming business management challenges.

ACCA has 50 independent affiliated chapters in states and localities around the nation.

Because our members are such small businesses, ACCA's dues charges are comparatively nominal. We depend on the development and sale of technical and management resources to fund our operation on behalf of our members.

ACCA Depends on Fax Broadcast

More than two years ago, ACCA eliminated our hard-copy publications (other than a quarterly magazine) and moved to strictly electronic communications with our members. This includes a weekly newsletter as well as other announcements on an as-needed basis.

These communications include relevant information on legislative and regulatory actions that could potentially affect our member companies, as well as general association announcements, product and service promotions, and industry news and updates.

Only one-third of our members have chosen to receive our communications by email. The remaining two-thirds receive our communications by fax broadcast. Less than 1% of our members have asked not to receive faxes; we place them on a "Do Not Fax" list and do not contact them in this way.

ACCA Cannot Split "Commercial" Communications from Advocacy Communications That Support Our Mission

Our newsletters by necessity include both advocacy communications and what might be defined as "commercial" advertisement. We cannot meet our financial obligations to the industry we represent without also promoting the sale of products and services which help to underwrite our public interest mission.

In addition, we sometimes allow third-party companies to "sponsor" our fax communications. This involves the inclusion of their logo and advertising message. While fax broadcast is significantly less expensive than printed matter and postal mail, it is still costly and these sponsorships are necessary to underwrite the cost of frequent communications with our members in support of our mission.

The rules issued by the Commission delineate between faxes that are "commercial" and "non-commercial." Yet we cannot afford to send out communications that are purely "non-commercial." Under these rules, we could

effectively lose our ability to communicate with many members in support of our public interest mission, particularly in the early stages of the program as noted below.

The Permission Enrollment Process for Our Membership Would Overwhelm Our Small Staff & Cause Major Delays in Communications

ACCA only has fifteen full-time staff members, with two devoted to membership administration. The process for enrolling our more than 4,000 members in an opt-in fax permission program would be an overwhelming one. There is no feasible way this can be completed before August 25, 2003, which means there would be considerable delays at a crucial time when Congress is returning to town and taking up a number of issues that are important to our members. In essence, the FCC's rule would make it impossible for us to fulfill our mission and make it less likely that these small contracting businesses would have an opportunity to be involved in the democratic process.

Meeting this requirement would add such a burden to our staff that we may need to add staff or outside assistance, thus draining further financial resources away from the fulfillment of our mission on behalf of our small business members.

While the Commission has allowed for the use of "electronic signatures" and online processing of permission, it is our experience with our members that such online alternatives get less of a response than traditional fax returns. In addition, we are unable to make the financial investment required to make such an electronic system truly seamless and more efficient.

Our Members Are In Their Peak Season & Less Likely to Respond to Requests for Response At This Time

ACCA's members all over the country are in their peak season, during the summer days when they are busy repairing and maintaining air conditioning systems. Since our members are such small businesses, very few of our member primary contacts are in their offices during this time; rather, they are on call and on the road servicing their customers.

Our experience is that requests for returned information during this peak season can go 1-2 months or more before being processed by the member. This means it is likely that a large part of our membership, who join us primarily to receive our communications, will go a lengthy period of time without receiving the communications they have paid for.

This has a significant financial impact on our association, but also, as noted above, makes it more difficult for us to send notices and alerts to our membership on important legislative and regulatory actions that require their attention.

ACCA Supports ASAE's Petition for Emergency Clarification

ACCA supports the petition for emergency clarification filed by the American Society of Association Executives (ASAE) on July 25, 2003, wherein the Commission was asked to issue a clarification that fax communications by tax exempt non-profit organizations conducted consistent with the organizations' tax exempt non-profit purpose are not covered by the definition of "unsolicited advertisement."

Conclusion

We hope the Commission will recognize the extremely negative impact its rules will have on organizations like ACCA, which represent America's small businesses before Congress and regulatory agencies (such as the Commission). The rules as issued would have a crippling effect on our ability to effectively help member companies participate in the democratic process, add an enormous paperwork and administrative burden, and drain financial resources needed to support our public interest mission as a tax-exempt non-profit organization.

Respectfully Submitted,

Kevin W. Holland
Vice President, Communications & Membership Services
Air Conditioning Contractors of America
2800 Shirlington Road, Suite 300
Arlington, VA 22206
703-575-4477
kevin.holland@acca.org